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DOCKET # Docket No. 34219

DOCUMENT # 193275
In Re: Docket No. 34219: Complaint of TDS TELECOM on Behalf of its Subsidiaries Blue Ridge Telephone & Telegraph Company, Inc., Nelson Ball Ground Telephone Company and Quincy Telephone Company Against Halo Wireless, Inc., Transcom Enhanced Services, Inc. and Other Affiliates for Failure to Pay Terminating Intrastate Access Charges for Traffic and For Expedited Declaratory Relief and Authority to Cease Termination of Traffic

ORDER ON COMPLAINTS

I. Background

A. TDS Telecom Complaint and Court Proceedings

On June 14, 2011, TDS TELECOM on behalf of its subsidiaries Blue Ridge Telephone Company, Camden Telephone & Telegraph Company, Inc., Nelson-Ball Ground Telephone Company, and Quincy Telephone Company (collectively "TDS Telecom") and, pursuant to O.C.G.A. §§ 46-2-20, 50-13-11, 46-5-45, 46-5-163(a), 9-4-1 *et. seq.* and Commission Utility Rule 515-2-1-.12, filed a Complaint against Halo Wireless, Inc. ("Halo Wireless"), Transcom Enhanced Services, Inc. ("Transcom"), and such other affiliated companies as are involved in the delivery of traffic to TDS Telecom for termination that have failed and refused to pay applicable access charges.

During the Commission proceeding, Halo filed a voluntary Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Eastern District of Texas, Case No. 11-42646, on August 8. Upon receiving notice of Halo's bankruptcy filing, the Commission decided during the August 9 evidentiary hearing to stay the proceeding as to Halo, solely, and that no findings of fact would be binding upon it. Then, Defendants, including both Halo and

Transcom, sought removal of this PSC action to federal district court in the Northern District of Georgia, Atlanta Division, Case No. 1:11-CV-2749.¹

On August 22, the district court stayed this action before the Commission pending final disposition of the Texas bankruptcy claim. On October 26, the Texas bankruptcy court found that the Commission could render a decision on the regulatory matters before it. Although the bankruptcy court directed that the Commission could determine whether it has jurisdiction raised in TDS Telecom's complaint, whether Halo violated Georgia law, and whether TDS Telecom was entitled to its requested relief, TDS Telecom could not collect on any liquidated debt incurred without the bankruptcy court's express permission. The bankruptcy court denied Halo's motion to further stay the proceedings pending its appeal to the Fifth Circuit. On January 26, 2012, the district court remanded this action back to the Commission.

The district court concluded that action before the Commission was not removable, citing similar rulings from three other district courts. The court determined that TDS Telecom's request to have the Commission issue cease and desist orders to prevent Defendants from acting in Georgia is clearly within the State's regulatory power. Further, as the court recognized, the Commission is expressly given jurisdiction to regulate telephone companies in Georgia. Finally, the district court found that because Halo removed this action prior to the Commission issuing an opinion, the court had no decision or interpretation to review. Consequently, the court granted TDS Telecom's motion to remand the action to the Commission.

B. AT&T Complaint

On February 3, 2012, BellSouth Telecommunications, LLC d/b/a AT&T Georgia ("AT&T Georgia"), filed a complaint as Intervenor against Halo. In its Complaint, AT&T Georgia alleges that Halo violated the parties' wireless interconnection agreement ("ICA") by "sending large volumes of traffic to AT&T Georgia that does not originate on a wireless network," even though such action is not authorized by the ICA. (AT&T Complaint, p. 1) AT&T also alleged that Halo altered or deleted call detail information. *Id.* at 4-5. Furthermore, AT&T alleged that Halo has refused payment of access charges on non-wireless originated traffic. *Id.* at 5-6. Finally, AT&T alleged that Halo has not paid for transport facilities provided under the parties' ICA. *Id.* at 6.

AT&T requested that the Commission find that it is excused from further performance under the parties' interconnection agreement as a result of these breaches, find that Halo is liable to AT&T for access charges on the interstate and interLATA landline traffic it sent to AT&T and find that Halo is liable for the cost of interconnection facilities it obtained from AT&T. *Id.* at 6-7.

¹ After a determination that the Atlanta suit involved the same parties and issues, it was transferred to Gainesville. In its final order, the district court consolidated the cases and addressed them collectively in granting TDS Telecom's motion to remand.

C. Halo's Partial Motion to Dismiss

On March 12, 2012, Halo moved to dismiss Counts I through III of AT&T's complaint. In its Motion, Halo made a preliminary statement that it has an FCC license to provide commercial mobile radio services ("CMRS"). (Motion, pp. 1-2). Halo also stated that it sells this service to Transcom Enhanced Services. *Id.* at 2. Courts of competent jurisdiction have previously ruled that Transcom is an enhanced service provider. *Id.* at 3. Halo asserted that state commission cannot undertake to interpret or enforce federal licenses. *Id.* at 6. The Commission denied Halo's Motion.

D. Hearings on Merits of Complaints and Post-Hearing Briefs

The Commission held evidentiary hearings on this matter on April 25-26, 2012. TDS Telecom presented the testimony of Thomas McCabe, Manager – State Government Affairs, Linda N. Robinson, Manager- Carrier Relations and Raymond Drause, Senior Wireless Engineer at McCall-Thomas Engineering Company. AT&T sponsored the testimony of Mark Neinast, Associate Director – Network Regulatory in AT&T's Network Planning and Engineering Department, and J. Scott McPhee, Associate Director – Wholesale Regulatory Policy & Support for Pacific Bell Telephone Company d/b/a AT&T California. Robert Johnson and Russ Wiseman, President and CEO of Halo, testified on behalf of Transcom and Halo respectively.

On May 29, 2012, the parties submitted post-hearing briefs. TDS Telecom requested the following relief:

1. Find that Halo is delivering toll traffic to the TDS Telecom Companies and that said toll traffic is subject to lawfully tariffed access charges;
2. Certify that finding to the Bankruptcy Court in Texas;
3. Find that Halo and Transcom are providing intrastate telecommunications service without authority from the Commission;
4. Order that Halo and Transcom immediately cease and desist operations in Georgia until the necessary and proper authority is obtained from the Commission;

Given that TDS Telecom, subtending the AT&T Tandem, is directly affected by the AT&T/Halo interconnection agreement, but is not a contractual party to that agreement, the companies also request that the Commission:

1. Issue an order providing that:
 - (a) Prior to providing non-CMRS telecommunications service in Georgia - e.g., the toll traffic delivery service that Halo currently provides in Georgia, Halo must order

from AT&T such trunk groups as are determined by AT&T to be necessary for the proper routing and recording of all traffic delivered by Halo to the AT&T tandems for termination on the TDS Companies' networks and cooperate with AT&T in the provisioning of such trunk groups; and

(b) Route traffic properly over the trunk groups that it has ordered from and have been provisioned by AT&T; and

(c) Transmit accurate calling party number, charge number and JIP for the calls it delivers to AT&T for termination on the TDS Companies' networks;

2. Issue an order requiring AT&T to immediately block all traffic delivered by Halo to the AT&T tandems for termination on the TDS Telecom Companies' networks, upon notice from the Commission, in the event that Halo fails to comply in any way with the Commission's orders issued in this docket;
3. Issue an order requiring Halo to pay all costs of AT&T, the TDS Telecom Companies and any third parties associated with the blocking of traffic in the event AT&T blocks traffic delivered by Halo to the AT&T Tandems for termination on the TDS Telecom Companies' networks pursuant to a Commission order; and
4. To the extent that Transcom and/or Halo do not comply with the Commission Order, commence legal action to enjoin Halo from providing unauthorized telecommunications services in Georgia, in the event that Halo fails to immediately cease and desist providing telecommunications services in Georgia until Halo has sought and obtained proper authority to provide telecommunications services in Georgia.

(TDS Brief, pp. 59-60).

In its Post-Hearing Brief, AT&T requested that the Commission grant the following relief:

- (a) Find that Halo has materially breached the ICA by (1) sending landline-originated traffic to AT&T, and (2) inserting incorrect Charge Number information on calls;
- (b) Find that as a result of these breaches (or either of them), AT&T is excused from further performance under the ICA and may stop accepting traffic from Halo;
- (c) Find, without quantifying any specific amount due, that Halo is liable to AT&T for access charges on the interstate and interLATA access traffic it has sent to AT&T;

- (d) Find, without quantifying any specific amount due, that Halo is liable to AT&T for interconnection facilities charges that it has refused to pay to AT&T; and
- (e) Grant all other relief as is just and appropriate.

(AT&T Brief, p. 28).

In their Joint Post-Hearing Brief, Transcom and Halo argued that the parties had not met their burden to show that access charges applied to the subject traffic. (Post-Hearing Brief, p. 28). In addition, the parties argued that Halo had not breached its agreement with AT&T. *Id.* Finally, the parties argued that neither a certificate of public convenience and necessity nor a certificate of authority was required for the services that they were providing. *Id.*

II. Jurisdiction

In its July 27, 2011 Order in Response to Objections to Jurisdiction, the Commission explained:

It appears from the pleadings that have been filed thus far that the parties dispute the type of service that is being provided by Halo and Transcom, and the nature of the traffic that is being delivered to TDS Telecom. The jurisdictional determination may be dependent on the findings reached on these factual issues. Therefore, the Commission will proceed with the hearings on the TDS Complaint. Halo and Transcom may raise any jurisdictional objections in the context of the proceeding.

(July 2011 Order, p. 2). As will be discussed more fully below, the Commission finds that a significant portion of the traffic that Transcom and Halo delivered to TDS Telecom and AT&T was intrastate telecommunications service. The Commission has jurisdiction over this type of traffic pursuant to O.C.G.A. §§ 46-2-20, 46-2-21, and 46-5-160 through 174.

III. Findings of Fact and Conclusions of Law

The dispute relates to calls that are terminated on TDS Telecom's network and AT&T's network. Halo is directly interconnected with AT&T, and as a result, it is indirectly interconnected with TDS. When the calling party dials the phone number belonging to either a TDS Telecom or AT&T customer, the call is routed to Transcom, which then hands the call off to Halo. Halo then delivers the call to AT&T. If the dialed number belongs to a TDS customer, AT&T will then route the call to TDS for termination. Halo has an interconnection agreement with AT&T; however, it does not have an agreement with TDS Telecom. Accordingly, AT&T's

complaint involves Halo's alleged breach of the parties' interconnection agreement; whereas, TDS Telecom asserts that Transcom and Halo have constructively ordered access services from its applicable Commission-approved tariff. Despite this difference between the complaints filed by TDS Telecom and AT&T, many of the underlying questions of fact and law are the same.

The Staff recommended that the Commission find that once TDS Telecom and AT&T present a prima facie case that Halo is delivering traffic for termination that would otherwise be subject to access charges, that Halo and Transcom have the burden to demonstrate that the traffic is exempt from such charges. The Commission adopts this recommendation. This conclusion is consistent with the Commission's decision in Docket No. 21905,² in which the Commission reasoned that:

Courts have found that the party raising the affirmative defense has the burden of proof. *Buist v. Time Domain Corporation*, 926 So. 2d 290, 296 (2005). Under this principle, GNAPs had the burden of proof to demonstrate the subject traffic was of such a nature as to preempt the Commission.

As discussed below, TDS and AT&T presented prima facie cases that Halo is delivering traffic for termination that would otherwise be subject to access charges, and Halo and Transcom did not rebut the prima facie cases.

The first question that the Commission will address is whether the methodologies employed by TDS Telecom and AT&T for determining the origin of the subject traffic are reasonable. The volume of Halo traffic that TDS Telecom received for termination increased substantially in December, 2010. TDS Telecom uses the EMI call detail records provided by AT&T to prepare the access bills sent to Halo. Staff recommended that use of the EMI records for billing is reasonable. It is consistent with industry practice to rely upon EMI records for this purpose. (Robinson Pre-filed Direct Testimony, pp. 6-7). The record also indicates that while telephone numbers are not infallible, they provide the best proxy for customer location in the absence of specific evidence on the customer's location. *Id.* at 8. On behalf of Halo, Wiseman testified that because of different technological offerings telephone numbers are no longer reliable indicators of the jurisdiction of the call for rating purposes. (Wiseman Pre-filed Direct Testimony, pp. 7-11). Although acknowledging that the calls described by Wiseman take place, Robinson testified that in her experience such traffic does not represent typical call flow. (Robinson Pre-filed Rebuttal Testimony, p. 8). Robinson testified that in her experience the phone numbers are an accurate indicator of the type of technology used to originate the call in the majority of instances. (Tr. 215-16). AT&T witness, Neinast, testified that call records he

² Request for Expedited Declaratory Ruling as to the Applicability of the Intrastate Access Tariffs of Blue Ridge Telephone Company, Citizens Telephone Company, Plant Telephone Company, and Waverly Hall Telephone LLC to the Traffic Delivered to Them by Global NAPs, Inc. ("Global Naps")

relied upon were 90 percent accurate in determining the physical origination point of a landline call. (Tr. 485-86).

The Commission finds that the call records relied upon by TDS Telecom and AT&T constitute a reasonable proxy for the technology used and the physical origination point of the call. Although these records are not 100 percent accurate, no party offered persuasive evidence of a more reliable and feasible alternative. Moreover, the Commission is not relying on this evidence to determine that 100 percent of the traffic delivered to TDS Telecom or AT&T was interstate or interLATA landline traffic. Instead, the Commission finds as a matter of fact that a significant percentage of the subject traffic in this proceeding meets that description.

The Commission will next address specifically TDS Telecom's complaint. Once it is determined that a significant percentage of the calls in question are interstate or interLATA landline telecommunications traffic, it is necessary to address the applicability of TDS Telecom's tariffs. Staff recommended that the Commission find that the switched access service offerings in TDS Telecom's intrastate access tariffs apply to the traffic delivered by Halo. TDS Telecom has sought to collect toll charges under its Commission-approved intrastate access tariffs for the toll traffic delivered by Halo that originated and terminated in Georgia. TDS Telecom's intrastate access tariff defines the term "customer" to mean "any individual, partnership, association, joint-stock company, trust, corporation, or governmental entity or other entity which subscribes to the services offered under this tariff, including both Interexchange Carriers (ICs) and End Users." Further, Staff recommended that the Commission find that Halo "constructively ordered" the switched access services set forth in TDS Telecom's intrastate access tariffs. The Commission adopts these Staff recommendations. In *Advantel, L.L.C. v. AT&T Corp.*, 118 F.Supp.2d 680, 685 (E.D. Va. 2000), the Court articulated the constructive ordering doctrine, "under which a party 'orders' a carrier's services when the receiver of services (1) is interconnected in such a manner that it can expect to receive access services; (2) fails to take reasonable steps to prevent the receipt of access services; and (3) does in fact receive such services." The first component is met because Halo is directly interconnected with AT&T and indirectly interconnected with TDS Telecom. The second component is met because the record does not show that Halo took any steps to prevent the receipt of the switched access services. Finally, the record shows that the services Halo received from TDS Telecom most closely match the Feature Group D services from TDS Telecom's access tariff. (Tr. 157, 196-97).

Staff recommended that the Commission find that the communication that has been discussed above constitutes a single call. In other words, Staff recommended that the Commission reject the argument that Transcom originates a second call when it hands the call off to Halo. The Commission adopts this Staff recommendation. The relevance of this argument is that Halo and Transcom argue that Transcom is an enhanced service provider, and that calls originated by Transcom are exempt from access charges. Therefore, Halo and Transcom argue that it does not owe access charges on these calls because they are initiated by Transcom. Halo and Transcom base their argument, in part, on *Bell Atl. Tel. Cos. v. FCC*, 26 F.3d 1 (D.C. Cir. 2000), in which the Court concluded that the FCC did not adequately explain its bases for applying an "end-to-end" analysis for calls to internet service providers and remanded the matter

back to the FCC. This case does not support Halo and Transcom's position in this case that the call initiated by the dialing party is terminated when it reaches Transcom, and then Transcom initiates a second call. First, *Bell Atl.* involved internet service providers, and Transcom is not an ISP. Second, the *Bell Atl.* Court did not hold that the ISP originated a second call. Instead, it merely found that the FCC did not sufficiently explain its position.

Moreover, in its *Connect America Order*,³ the FCC held the following:

1005. We first address a dispute regarding the interpretation of the intraMTA rule. Halo Wireless (Halo) asserts that it offers "Common Carrier wireless exchange services to ESP and enterprise customers" in which the customer "connects wirelessly to Halo base stations in each MTA." It further asserts that its "high volume" service is CMRS because "the customer connects to Halo's base station using wireless equipment which is capable of operation while in motion." Halo argues that, for purposes of applying the intraMTA rule, "[t]he origination point for Halo traffic is the base station to which Halo's customers connect wirelessly." On the other hand, ERTA claims that Halo's traffic is not from its own retail customers but is instead from a number of other LECs, CLECs, and CMRS providers. NTCA further submitted an analysis of call records for calls received by some of its member rural LECs from Halo indicating that most of the calls either did not originate on a CMRS line or were not intraMTA, and that even if CMRS might be used "in the middle," this does not affect the categorization of the call for intercarrier compensation purposes. These parties thus assert that by characterizing access traffic as intraMTA reciprocal compensation traffic, Halo is failing to pay the requisite compensation to terminating rural LECs for a very large amount of traffic. Responding to this dispute, CTIA asserts that "it is unclear whether the intraMTA rules would even apply in that case."

1006. We clarify that a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider. Where a provider is merely providing a transiting service, it is well established that a transiting carrier is not considered the originating carrier for purposes of the reciprocal compensation rules. Thus, we agree with NECA that the "re-origination" of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a CMRS-originated call for purposes of reciprocal compensation and we disagree with Halo's contrary position. [Footnotes omitted].

In the above-paragraphs, the FCC is very clear that what Transcom and Halo are doing does not constitute originating the call. The Staff's recommendation on this point is consistent with the

³ *Connect America Fund*, FCC 11-161, 2011 WL 5844975 (rel. Nov. 18, 2011 ("Connect America Order"))

recent decision of the Tennessee Regulatory Authority. Based on Halo's *ex parte* filings with the FCC, the TRA concluded that the FCC was aware of Halo's re-origination theory when it issued the *Connect America Order*. (McPhee Direct Ex JSM-9). The FCC has previously rejected similar ESP-origination theories. *See*, Order and Notice of Proposed Rulemaking, *In the Matter of AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, 20 FCC Rcd. 4826 (2005) *aff'd*, *AT&T Corp v. FCC*, 454 F. 3d 329 (D.C.Cir. 2006).

Furthermore, TDS Telecom witness Drause, testified that the equipment that Transcom uses at its tower sites is not capable of originating a phone call. Transcom equipment might be used to transport a call, but unlike a wireless handset, it does not contain the intelligence necessary to actually originate a phone call on its own. (Tr. 250).

For all of the reasons discussed above, the Commission concludes that the calls at issue in this proceeding constitute a single call. The clear language of the FCC Order together with the factual testimony in the record supports the conclusion that the calls are not originated by Transcom. Therefore, even if Transcom was an ESP, it would not alter the Commission's conclusions with regard to its jurisdiction over the subject traffic, Transcom and Halo's liability with regard to the subject traffic, or the alleged breach by Halo of its interconnection agreement with AT&T. Furthermore, as discussed above, the evidence shows that a majority of the traffic at issue was originated through a landline provider and not a CMRS provider.

Now that it has been determined that the communications in question constitute a single call and that a significant portion of the traffic originated as traditional landline telecommunications service, the Commission must address whether the jurisdictional rating of a call may be impacted by any changes to the content in the middle of delivering the call. On this point, the Commission adopts the Staff's recommendations that the jurisdictional rating of the call is based on the beginning and end points of the call and that calls that are "IP-in-the-middle" are still subject to access charges. The Commission concludes that these recommendations are consistent with the Commission's Order Adopting in Part and Modifying in Part the Hearing Officer's Initial Decision in *Global Naps*.

In addition, Transcom has argued that it is exempt from access charges because it is an enhanced service provider. Given the Commission's finding that Transcom is not originating the call, regardless of Transcom's ESP status, it would owe access on the subject traffic as well as being in breach of its interconnection agreement with AT&T. Nevertheless, the Commission adopts Staff's recommendation to find that Transcom is not acting as an ESP with regard to the traffic at issue in this docket. In order to be acting as an "ESP," Transcom must be providing an "enhanced service," which is defined as:

services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted

information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.

47 C.F.R. Section 64.702(a). In order to be an enhanced service, the FCC has held that the information provided cannot be merely incidental to the telecommunications service, but instead, it must be the “essential service provided.” *AT&T 900 Dial-It Services and Third Party Billing and Collection Services*, File No. ENF-88-05, Memorandum Opinion and Order, 4 FCC Rcd 3429, 3431, ¶ 20 (CCB 1989). The record reflects that Transcom’s service is not the essential service provided, but is instead what is commonly referred to as “call conditioning.” (Drause Rebuttal Pre-filed Testimony, pp. 17-18). Furthermore, the evidence shows that the calling party does not know about Transcom’s involvement in the call. In *AT&T Calling Card*, the FCC held that an advertising message did not constitute an enhanced service because it was “provided automatically, without the advance knowledge or consent of the customer, there is no ‘offer’ to the customer of anything other than telephone service, nor is the customer provided with the ‘capability’ to do anything other than make a telephone call.” (¶ 15). Application of this standard to the current case shows that Transcom is not providing an enhanced service.

The Commission adopts Staff’s recommendation to conclude that AT&T is not barred from raising the issue that Transcom is not an enhanced service provider for the reasons set forth in its Order Denying Partial Motion to Dismiss. Although Halo and Transcom argue that the Commission only addressed that the issue of res judicata, and did not address collateral estoppel. Halo and Transcom argue that collateral estoppel does not require that the prior litigation involve the identical parties. However, the case law relied upon by the Commission does include identical parties as a requisite for collateral estoppel. *See, Body of Christ Overcoming Church of God, Inc. v. Brinson*, 287 Ga. 485, 486 (2010). Moreover, the identity of the parties was not the only criterion for collateral estoppel that this case failed to satisfy. The Commission also found that it was not the same cause of action. Finally, as stated above, because Transcom does not originate the subject traffic, the question of whether it is an enhanced service provider does not impact the resolution of the issues before the Commission.

Turning next to the specific counts in AT&T’s Complaint, the Commission adopts Staff’s recommendation to find that Halo is sending landline originated traffic to AT&T in breach of the parties’ interconnection agreement. The agreement only allows Halo to send AT&T traffic that originates on wireless equipment. AT&T took the following steps to analyze whether the calls were landline or wireless originated:

1. For each call, [AT&T] first identified the 10-digit Calling Party Number (“CPN”) of the calling party (which is one of the SS7 data fields on each call).

2. [AT&T] then looked in the Local Exchange Routing Guide (“LERG”)⁴ to find the carrier that holds the NPA-NXX code for that originating CPN.
3. Because telephone numbers can be ported (*i.e.*, transferred from one carrier to another), [AT&T] then looked at the Local Number Portability (“LNP”) database to see whether the originating number had been ported to some carrier other than the one that owned the NPA-NXX.
4. At that point, [AT&T] knew who the originating carrier was. Based on the type of originating carrier (wireless or landline, as specified by the originating carrier in the LERG), [AT&T] also knew whether the call was a landline-originated call or a wireless-originated call.
5. [AT&T] could also determine, based on the end-points of the call and type of call, which intercarrier compensation rate should have applied (*i.e.*, reciprocal compensation or access charges). Our focus, however, was on whether traffic was landline-originated or wireless-originated.

(Neinast Pre-filed Direct Testimony, pp. 13-14).

The call data analyzed for three different periods using the industry’s Local Exchange Routing Guide and the North American Number Portability database shows that 74%, 75% and 60% of the calls delivered to AT&T by Halo originated as landline calls. *Id.* at 14. Even though the percentages should be adjusted downward to account for the fact that the LERG will reflect certain types of numbers that have been assigned to services used by customers on wireless devices as being landline, the adjustment would not be substantial. Moreover, the parties’ agreement does not allow Halo to send any landline traffic, and Halo has admitted to sending AT&T calls that originated on landline networks. (Wiseman Pre-filed Direct Testimony, p. 26).

The Commission adopts Staff’s recommendation that the Commission find that Halo breached its interconnection agreement with AT&T by sending inaccurate call information. Call information includes the phone number of the person that originated the call, which is referred to as the Calling Party Number or “CPN.” It also can include a different number for the person or entity that is financially responsible for a call, which is the Charge Number or “CN.” Halo inserted Transcom’s CN into the call record on every call it sent to AT&T, even though Transcom is not the party financially responsible for the call. (Tr. 317). This resulted in making the calls appear wireless and local, regardless of whether they actually were. *Id.*

⁴ The LERG is a national routing database that stores information necessary to properly route traffic throughout the United States. It displays, for each NPA-NXX, the carrier to which that NPA-NXX is assigned, the tandem switch for routing interexchange and local traffic, and other pertinent information.

The Commission adopts Staff's recommendation to find that Halo has refused to pay AT&T for interconnection facilities provided by AT&T. Cost responsibility is based on the amount of traffic sent by each carrier.

Staff also recommended that the Commission find that Halo is not providing CMRS to Transcom. Therefore, the Staff recommended that the Commission find that Halo is providing interexchange telecommunications service. The term "mobile station" is defined as "a radio-communication station *capable of being moved and which ordinarily does move.*" 47 U.S.C. § 153(34) (emphasis added). The evidence showed that the customer equipment used by Transcom and Halo is mounted on a pipe that is attached to a building near the base of the tower. The testimony of witness Drause demonstrated that it would not be realistic to provide mobile service using that equipment. (Tr. 249-53). Based on this testimony, the Commission adopts Staff's recommendation.

The Commission also adopts Staff's recommendation to find that Halo and Transcom are providing intrastate telecommunications service without the required certification, and, pursuant to its authority under O.C.G.A. § 46-5-45 and 46-5-163(a), to order Transcom and Halo to cease and desist the provision of intrastate telecommunications service unless and until they receive certificates to do so from this Commission. O.C.G.A. § 46-5-45 states:

Whenever any person is engaged in or is about to engage in the construction, operation, or acquisition of any telephone line, plant, or system without having secured a certificate of public convenience and necessity as required by Code Section 46-5-41, any interested person may file a complaint with the commission. The commission may, with or without notice, make its order requiring the person complained of to cease and desist from such construction, operation, or acquisition until the commission makes and files its decision on the complaint or until the further order of the commission. The commission may, after a hearing conducted after the giving of reasonable notice, make such order and prescribe such terms and conditions with respect thereto as are just and reasonable.

O.C.G.A. § 46-5-163(a) provides:

A telecommunications company including a telecommunications services reseller shall not provide telecommunications services without a certificate of authority issued by the commission. *The provisions of Code Section 46-5-45 shall apply in circumstances where a telecommunications company is providing telecommunications services without a certificate issued by the commission.*

(emphasis added). Halo and Transcom have been engaged in the operation of telephone plant, line and system and have been providing telecommunications services in Georgia. Neither company has received certification from this Commission.

The Commission adopts Staff's recommendation that the Commission find that Halo is not providing a transit service. Tandem transit traffic is the exchange of local traffic, but Halo is delivering interstate and intrastate toll traffic to AT&T, and indirectly to TDS Telecom. Halo's reliance on the Connect America Order is misplaced. The FCC stated that a carrier that provides a transit service is not the originating carrier for purposes of reciprocal compensation. (Connect America Order, ¶ 1106). The Order does not indicate that Halo is a transiting provider.

With regard to the specific relief sought by TDS Telecom and AT&T, Staff recommended the following:

A. TDS Telecom's Requested Relief:

1. Find that Halo is delivering toll traffic to the TDS Telecom Companies and that said toll traffic is subject to lawfully tariffed access charges;

Staff recommended granting this requested relief.

2. Certify that finding to the Bankruptcy Court in Texas;

Staff recommended granting this requested relief.

3. Find that Halo and Transcom are providing intrastate telecommunications service without authority from the Commission;

Staff recommended granting this requested relief.

4. Order that Halo and Transcom immediately cease and desist operations in Georgia until the necessary and proper authority is obtained from the Commission;

Staff recommended granting this relief.

5. Issue an order providing that:

- (a) Prior to providing non-CMRS telecommunications service in Georgia - e.g., the toll traffic delivery service that Halo currently provides in Georgia, Halo must order from AT&T such trunk groups as are determined by AT&T to be necessary for the proper routing and recording of all traffic delivered by Halo to the AT&T tandems for termination on the TDS Companies' networks and cooperate with AT&T in the provisioning of such trunk groups;
- (b) Route traffic properly over the trunk groups that it has ordered from and have been provisioned by AT&T; and

- (c) Transmit accurate calling party number, charge number and JIP for the calls it delivers to AT&T for termination on the TDS Companies' networks;

Staff's recommendation with regard to AT&T's requested relief adequately addresses this request.

6. Transmit accurate calling party number, charge number and JIP for the calls it delivers to AT&T for termination on the TDS Companies' networks;

Staff's recommendation with regard to AT&T's requested relief adequately addresses this request.

7. Issue an order requiring AT&T to immediately block all traffic delivered by Halo to the AT&T tandems for termination on the TDS Telecom Companies' networks, upon notice from the Commission, in the event that Halo fails to comply in any way with the Commission's orders issued in this docket;

Staff's recommendation with regard to AT&T's requested relief adequately addresses this request.

8. Issue an order requiring Halo to pay all costs of AT&T, the TDS Telecom Companies and any third parties associated with the blocking of traffic in the event AT&T blocks traffic delivered by Halo to the AT&T Tandems for termination on the TDS Telecom Companies' networks pursuant to a Commission order; and

Staff recommended that the Commission deny this request.

9. To the extent that Transcom and/or Halo do not comply with the Commission Order, commence legal action to enjoin Halo from providing unauthorized telecommunications services in Georgia, in the event that Halo fails to immediately cease and desist providing telecommunications services in Georgia until Halo has sought and obtained proper authority to provide telecommunications services in Georgia.

Staff recommended that the Commission deny this request.

B. AT&T's Requested Relief:

1. Find that Halo has materially breached the ICA by (1) sending landline-originated traffic to AT&T, (2) inserting incorrect Charge Number information on calls, and (3) failing to pay for interconnection facilities;

2. Find that as a result of these breaches, AT&T is excused from further performance under the ICA and may stop accepting traffic from Halo;
3. Find that Halo is liable to AT&T for access charges on the interstate and interLATA landline traffic it has sent to AT&T;
4. Find that Halo is liable for the cost of interconnection facilities it has obtained from AT&T Georgia;

Staff recommended that the Commission grant AT&T's requested relief.

The Staff's recommendations with regard to the specific relief requested is consistent with its recommendations on the issues addressed previously in this Order. Therefore, the Commission adopts Staff's recommendation with regard to the relief requested by the parties for all of the reasons stated throughout the order.

IV. Ordering Paragraphs

WHEREFORE IT IS ORDERED, that the Commission has jurisdiction over the Complaints filed by TDS Telecom and AT&T.

ORDERED FURTHER, that that Halo and Transcom are providing intrastate telecommunications service without authority from the Commission. The Commission will certify this finding to the Bankruptcy Court.

ORDERED FURTHER, that Halo is delivering toll traffic to the TDS Telecom Companies and said toll traffic is subject to lawfully tariffed access charges

ORDERED FURTHER, that Halo and Transcom shall immediately cease and desist operations in Georgia until the necessary and proper authority is obtained from the Commission

ORDERED FURTHER, that Halo "constructively ordered" the switched access services set forth in TDS Telecom's intrastate access tariffs.

ORDERED FURTHER, that Halo has materially breached its interconnection agreement with AT&T by (1) sending landline-originated traffic to AT&T, (2) inserting incorrect Charge Number information on calls, and (3) failing to pay for interconnection facilities. As a result of these breaches, AT&T is excused from further performance under the parties' interconnection agreement and may stop accepting traffic from Halo;

ORDERED FURTHER, that Halo is liable to AT&T for access charges on the interstate and interLATA landline traffic it has sent to AT&T.

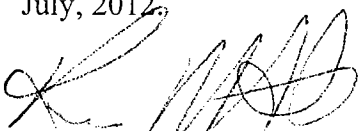
ORDERED FURTHER, that Halo is liable for the cost of interconnection facilities it has obtained from AT&T Georgia

ORDERED FURTHER, that all findings, conclusions and decisions contained within the preceding sections of this Order are adopted as findings of fact, conclusions of law, and decisions of regulatory policy of this Commission.

ORDERED FURTHER, that a motion for reconsideration, rehearing, oral argument, or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.


ORDERED FURTHER, that jurisdiction over this matter is expressly retained for the purpose of entering such further Order(s) as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 17th day of July, 2012.



Reece McAlister
Executive Secretary

7-17-12
Date



Tim G. Echols
Chairman

7-17-12
Date